



General Assembly

Distr.: Limited
24 October 2005

Original: English

Sixtieth session

Third Committee

Agenda item 71 (a)

Human rights questions: implementation of human rights instruments

**Austria, Belgium, Benin, Chile, Costa Rica, Czech Republic,
Denmark, Ecuador, Finland, France, Latvia, Lithuania,
Netherlands, Nigeria, Norway, Panama, Paraguay, Peru, Poland,
Portugal, Romania, Slovenia and Sweden: draft resolution**

Torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments and customary international law,

Recalling also that a number of international, regional and domestic courts, including the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹

Noting that under the Geneva Conventions of 1949² torture is a grave breach and that under the statutes of the International Criminal Tribunal for the Former

¹ United Nations, *Treaty Series*, vol. 1465, No. 24841.

² *Ibid.*, vol. 75, Nos. 970-973.



Yugoslavia and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, and the Rome Statute of the International Criminal Court³ acts of torture are war crimes and can constitute crimes against humanity.

Commending the persistent efforts by non-governmental organizations, including the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, inter alia, by ensuring that no individual in their custody or under their physical control, regardless of nationality or physical location, shall be subject to torture or cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that Governments must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations, inter alia, by ensuring proper follow-up of recommendations and conclusions from the relevant treaty bodies and mechanisms, including the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment;

3. *Condemns in particular* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)⁴ as a useful tool in efforts to combat torture;

5. *Stresses also* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and that the perpetrators of all acts of torture must be prosecuted and punished;

³ *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998, vol. I: Final documents* (United Nations publication, Sales No. E.02.L.5), sect. A.

⁴ Resolution 55/89, annex.

6. *Urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

7. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

8. *Recalls* that States shall not expel, return ("refouler"), extradite or in any other way transfer a person to another State under any circumstances, including if diplomatic assurances have been obtained, where there are substantial grounds for believing that the person would be in danger of being subjected to torture;

9. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges Governments to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

10. *Stresses* that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment and punishment;

11. *Reminds* all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;

12. *Calls upon* all Governments to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

13. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ as a matter of priority;

14. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual applications, to consider the possibility of withdrawing their reservations to article 20 and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

15. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information

⁵ United Nations, *Treaty Series*, vol. 1465, No. 24841.

concerning children and juveniles when submitting reports to the Committee against Torture;

16. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁶ which provides further measures for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

17. *Welcomes* the work of the Committee against Torture and the report of the Committee,⁷ submitted in accordance with article 24 of the Convention;

18. *Calls upon* the United Nations High Commissioner for Human Rights to continue to provide, at the request of Governments, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

19. *Welcomes* the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment,⁸ and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

20. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by Governments to his recommendations, visits and communications, including progress made and problems encountered;

21. *Calls upon* all Governments to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to respond fully and expeditiously to his urgent appeals, to grant requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his recommendations;

22. *Stresses* the need for the continued regular exchange of views among the Committee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

23. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for the Victims of Torture, and appeals to all Governments and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions;

⁶ Resolution 57/199, annex.

⁷ Official Records of the General Assembly, Sixtieth Session, Supplement No. 44 (A/60/44).

⁸ See A/60/316.

24. *Requests* the Secretary-General to continue to transmit to all Governments the appeals of the General Assembly for contributions to the Fund and to include the Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

25. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture, noting the future establishment of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention, commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture;

26. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-second session and to the General Assembly at its sixty-first session a report on the status of the Convention and a report on the operations of the Fund;

27. *Calls upon* all Governments, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

28. *Decides* to consider at its sixty-first session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.